



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

January 10, 2005

Robert Barr
PO Box 341
Belmont, NH 03220

**NOTICE OF DECISION
ADMINISTRATIVE FINE
DOCKET NO. AF 03-020
(WASTE MANAGEMENT DIVISION)**

Dear Mr. Barr:

As you are aware, by Notice of Proposed Administrative Fine No. AF 03-030 issued July 23, 2003, the New Hampshire Department of Environmental Services Waste Management Division ("DES") sought administrative fines totaling \$16,000 against Robert Barr for alleged violations of RSA 149-M:9 relating to operating an unpermitted solid waste facility on property located at 55 Park Street, Northfield, NH ("the Park Site"), and for alleged violations of Administrative Order No. WMD 03-006 ("the Order").

A hearing on this matter was held on December 6, 2004. It was attended by the following persons: Mr. Robert Barr, Ms. Cheryl McGary, Ms. Tammy Calligandes, Attorney Kerry Barnsley, and Attorney Scott McGuffin. Mr. Barr left the hearing before the hearing concluded. Following Mr. Barr's departure, the hearing was conducted in accordance with the provisions of Env-C 204.09.

Pursuant to RSA 149-M:16, and based on my review of the evidence presented at the hearing held on this matter, I have concluded that a fine of \$16,000 is appropriate as set forth below:

This decision is based on the following findings and conclusions:

1. Robert Barr is an individual having a mailing address of P.O. Box 341, Belmont, NH 03220.
2. Robert Barr is the record owner of land at 55 Park Street, Northfield, NH, more particularly described in a deed recorded in the Merrimack County Registry of Deeds at Book 223, Page 1073, and identified on Northfield Tax Map U7, as Lot 6.
3. On May 20, 2002, Division personnel received a complaint alleging improper disposal of solid waste at the Park Site.
4. On June 4, 2002, Division personnel conducted an inspection of the Park Site. The purpose of the inspection was to determine compliance relative to RSA 149-M and the Solid Waste Rules.

5. During the June 4, 2002 inspection, Division personnel observed waste consisting of, but not limited to, scrap metal, typewriters, metal duct work, metal stove pipe, cardboard, broken glass, double oven stove, metal office cabinets, damaged Christmas decorations, a sink, computer monitors, file cabinets, car parts, and PVC piping.

6. The scrap metal, typewriters, metal duct work, metal stove pipe, cardboard, broken glass, double oven stove, metal office cabinets, damaged Christmas decorations, a sink, computer monitors, file cabinets, car parts, and PVC piping observed by Division personnel at the Park Site are solid wastes as defined by RSA 149-M:4, XXII.

7. A review of Division files shows that Robert Barr has not applied for nor does he hold a permit to operate a solid waste facility at any New Hampshire location.

8. On June 27, 2002, Division personnel conducted a follow-up inspection of the Park Site. Division personnel observed an empty dumpster at the Park Site. The Park Site remained unchanged since the June 4, 2002 inspection.

9. On July 17, 2002, Division personnel conducted a second follow-up inspection of the Park Site. Division personnel observed a dumpster approximately half full with carpeting, cardboard, plastic, metals, and other solid wastes. At that time, it appeared that approximately 30-40% of the solid wastes from the Park Site had been removed from the Park Site and placed into the dumpster.

10. On July 30, 2002, Division personnel conducted a third follow-up inspection of the Park Site. Division personnel observed that the dumpster had been removed from the Park Site. Division personnel observed no other changes to the Park Site since the July 17, 2002 inspection.

11. By letter dated August 5, 2002, to Mr. Barr, Division personnel requested that Mr. Barr remove all solid wastes at the Park Site by September 15, 2002, and to submit copies of the disposal receipts to the Division.

12. On September 3, 2002, Division personnel conducted a fourth follow-up inspection of the Park Site. The Park Site remained unchanged since the July 30, 2002 inspection.

13. On September 6, 2002, Mr. Barr contacted the Division relative to the solid waste at the Park Site. Mr. Barr informed Division personnel that he had disposed of 8,700 pounds of solid waste from the Park Site. No disposal receipts for these wastes have been submitted to the Division as previously requested. Mr. Barr told Division personnel that he would have all solid waste at the Park Site cleaned up by the first snowfall.

14. On September 19, 2002, Division personnel conducted another follow-up inspection of the Park Site. The Park Site remained unchanged since the September 3, 2002 inspection.
15. On October 24, 2002, Division personnel conducted another follow-up inspection of the Park Site. The Park Site remained unchanged since the September 19, 2002 inspection.
16. On November 13, 2002, Division personnel conducted another follow-up inspection of the Park Site. The Park Site remained unchanged since the October 24, 2002 inspection.
17. On December 27, 2002, Division personnel conducted another follow-up inspection of the Park Site. The Park Site remained unchanged since the November 13, 2002 inspection except that the wastes were now snow covered.
18. On February 25, 2003, Division personnel hand delivered Administrative Order No. WMD 03-06 ("Order") to Mr. Barr. Division personnel also conducted another follow-up inspection of the Park Site. The Park Site remained unchanged since the December 27, 2002 inspection.
19. On April 9, 2003, Division personnel conducted another follow-up inspection of the Park Site. The Park Site remained unchanged since the February 25, 2003 inspection.
20. On May 6, 2003, Division personnel conducted another follow-up inspection of the Park Site. The Park Site remained unchanged since the April 9, 2003 inspection.
21. On May 20, 2003, Division personnel conducted another follow-up inspection of the Park Site. The Park Site remained unchanged since the May 6, 2003 inspection.
22. On July 8, 2003, Division personnel conducted another follow-up inspection of the Park Site. The Park Site remained unchanged since the May 20, 2003 inspection.
23. On July 23, 2003, the Division issued a Notice of Proposed Administrative Fine No. AF 03-20 ("the Notice") to Robert Barr, seeking fines totaling \$16,000 for violations of statutes and rules governing solid waste management and for not complying with the Order.
24. Specifically, the Notice cited Robert Barr for violating RSA 149-M:9, I by operating an unpermitted solid waste facility. Pursuant to Env-C 612.11(a), the Division sought a fine of \$8,000, representing four months of non-compliance (February '03 –June '03).
25. The Notice further cited Robert Barr for violating RSA 149-M:15, I by failing to comply with the Order issued in February. Pursuant to Env-612.11(d), the Division sought a fine of \$8,000, representing four months of non-compliance with the Order (February '03 –June '03).
26. Pursuant to RSA 149-M, DES regulates the management and disposal of solid waste. Pursuant to RSA 149-M:7, the Commissioner of the Department of Environmental Services

(“DES”) has adopted Env-Wm 100 – 300, 2100 *et seq.* (“Solid Waste Rules”) to implement this program.

27. Pursuant to RSA 149-M:16, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of RSA 149-M or rules adopted pursuant thereto. Pursuant to this section, the Commissioner has adopted Env-C 612 to establish the schedule of fines for such violations.

28. RSA 149-M:4, XXII defines “solid waste” in part, as “any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material.”

29. RSA 149-M:4, XXI defines “refuse”, in part, as “any waste product ... which is composed wholly or partly of such materials as ... brick, plaster or other waste resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance.”

30. RSA 149-M:4, IX defines a “[solid waste] facility” as “a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment or disposal of solid waste.”

31. The Park Site constitutes a “solid waste facility” as defined by RSA 149-M:4, IX.

32. Env-Wm 102.116 defines “owner” as “a person who owns a facility or part of a [solid waste] facility.”

33. Robert Barr is the owner of a solid waste facility.

34. RSA 149-M:9, I states that “No person shall construct, operate or initiate closure of a public or private facility without first obtaining a permit from [DES].”

35. The Division presented Cheryl McGarry as its principal witness at the hearing. Ms. McGarry testified that, following the receipt of a May 20, 2002 complaint alleging improper disposal of solid waste at Mr. Barr’s Park Street site (See Exhibit 1), the Division made a number inspections of the site. (The administrative record indicates that between June 4, 2002 and July 8, 2003, fourteen (14) inspections of the site were made by Division personnel.) Following at least six of these inspections, Division personnel prepared an Activity Report (See Exhibits 2, 3, 6, 8, 9, and 10) describing the solid wastes observed on the site. Division inspectors took color photographs of site conditions (See Exhibits 2a, 2b, 2c, 3a, 3b, 3c, 6a, 6b, 6c, 6d, 6e, 9a, 9b, and 9c) showing diverse materials on the site during at least four of these inspections. The photographs and Activity Reports were introduced into evidence through Ms. McGarry who testified that the photographs depicted solid wastes on the site. Ms. McGarry further testified that Mr. Barr had not obtained a permit to operate a solid waste facility at the site.

During one such inspection on July 17, 2002, Division personnel observed that a portion of the solid waste had been placed into a dumpster and photographed the dumpster and its contents (See Exhibits 3, 3a, 3b, and 3c). In a subsequent September 6, 2002 telephone conversation between Division personnel and Mr. Barr (See telephone communication report, Exhibit 5), Mr. Barr reported that 8,700 pounds of the waste had been shipped off site and the remainder of the wastes would be removed before snowfall. Follow-up inspections made between December 27, 2002 and August 19, 2003 (See Exhibits 6, 8, 9 and 10) indicated that additional wastes had not been removed from the site.

Ms. McGarry also testified that the Division issued Mr. Barr an Administrative Order in early 2003 to remove the solid waste from the site. A copy of Administrative Order No. WMD 03-06 dated January 31, 2003 issued to Mr. Barr is contained in the record of this case. Follow-up inspections, photographs and Activity Reports made between February 25, 2003 and August 19, 2003 (See Exhibits 8, 9 and 10) revealed that the solid waste was not removed as ordered. Ms. McGarry testified that additional solid wastes were brought onto the site following issuance of the order to Mr. Barr.

Based upon the evidence presented by the Division at the December 6, 2004 hearing including oral testimony, Activity Reports, and photographs and the administrative record including Administrative Order No. WMD 03-06, the Division has proved by a preponderance of evidence that Robert Barr has committed the violations alleged in the Notice.

36. After hearing, having proved by a preponderance of the evidence that Robert Barr has committed the violations alleged in the Notice, I find the total amount of fines sought (\$16,000) is the appropriate amount for the violations and fully supportable under RSA 149-M:16 and Env-C 612.

The \$16,000 fine shall be paid within 30 days of the date of the decision. Fine payments shall be by certified check or money order payable to "Treasurer-State of NH" and sent to the attention of the Legal Unit, DES/Office of the Commissioner, PO Box 95, Concord, NH 03302-0095.

Any party aggrieved by this decision may file a motion for reconsideration within 30 days of the date of this decision, in accordance with NH RSA 541 and Env-C 206 (copy enclosed).

COMMISSIONER OF ENVIRONMENT SERVICES

By: _____

COPY
Paul L. Heitzler, Hearing Officer

cc: Michael P. Nolin, Commissioner

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Notice of Decision

January 7, 2005

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Anthony P. Giunta, P.G., Director, DES Waste Management Division

Paul Heirtzler, Hearing Officer

Gretchen R. Hamel, Administrator, DES Legal Unit

Kerry D. Barnsley, Compliance Attorney, DES Legal Unit

Cheryl McGarry, DES SIS

Tammy Calligandes, DES SIS

Public Information Officer, DES PIP

Scott McGuffin, Esq., Town of Northfield

PART Env-C 206 MOTIONS FOR RECONSIDERATION

Env-C 206.01 Purpose. The rules in this part are intended to supplement any statutory provisions, such as RSA 541, which require or allow a person to request reconsideration of a decision of the department prior to appealing the decision. These rules do not create the right to request reconsideration of a decision where it does not otherwise exist under law.

Source. #6960, eff 3-25-99

Env-C 206.02 Applicability. The rules in this part shall apply whenever any person has a right under applicable law to request a reconsideration of a decision prior to filing an appeal of the decision with the applicable court or council having appellate jurisdiction.

Source. #6960, eff 3-25-99

Env-C 206.03 Time for Filing. As specified in RSA 541:3, any motion for reconsideration shall be filed no later than 30 days after the date the decision that is the subject of the motion was issued.

Source. #6960, eff 3-25-99

Env-C 206.04 Filing.

(a) Any person wishing to request reconsideration of a decision of the commissioner shall file the original and 2 copies of a motion for reconsideration at the following address:

Office of the Commissioner, Enforcement Unit

Department of Environmental Services

6 Hazen Drive

Concord, NH 03301

(b) Any person wishing to request reconsideration of a decision of a division relating to a matter for which the commissioner has delegated the decision-making authority to the division shall file the original and 2 copies of a motion for reconsideration with the director of the division at the following address:

Department of Environmental Services

29 Hazen Drive

Concord, NH 03301

(c) For purposes of this section, a "decision of the commissioner" means a decision that is signed by the commissioner, or by the assistant commissioner on behalf of the commissioner, either alone or in conjunction with a division director, such as an administrative order.

(d) For purposes of this section, a "decision of a division" means a decision that is signed by a division director or other authorized division staff, but not signed by the commissioner or by the assistant commissioner on behalf of the commissioner, such as a decision to issue or deny a permit.

Source. #6960, eff 3-25-99

Env-C 206.05 Format and Content of Motion. The person filing a motion for reconsideration shall provide the following information:

- (a) The exact legal name of each person moving for reconsideration and the residence address or principal place of business of the person;
- (b) A clear and concise statement of the reason(s) why the person believes the decision to be in error;
- (c) A concise and explicit statement of the facts upon which the department is expected to rely in granting relief;
- (d) A clear and concise statement of the specific relief or ruling requested;
- (e) A copy of the decision which is the subject of the motion; and
- (f) Such other information as the party filing the motion deems pertinent and relevant, including sworn written testimony and other evidence that was not available for the hearing.

Source. #6960, eff 3-25-99